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Attorneys for Defendant
The Travelers Indemnity Company
(incorrectly sued as Travelers Insurance Company Inc.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

E.M. SERGEANT PULP & CHEMICAL CO., INC. AND SERGEANT CHEMICAL COMPANY,	:	Civil Action No. _____
Plaintiffs,	:	
v.	:	
TRAVELERS INSURANCE COMPANY INC. AND COLUMBIA INSURANCE COMPANY,	:	NOTICE OF REMOVAL
Defendants.	:	

TO THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY:

PLEASE TAKE NOTICE that, on this date, defendant The Travelers Indemnity Company (incorrectly sued as Travelers Insurance Company Inc.) ("Travelers"), by its undersigned counsel, files this Notice of Removal pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, removing this entire action from the Superior Court of New Jersey, Law Division, Bergen County to the United States District Court for the District of New Jersey. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332, the diversity jurisdiction statute.

In support of this Notice of Removal, Travelers states as follows:

PROCEDURAL BACKGROUND

1. On January 18, 2012, an action entitled E.M. Sergeant Pulp & Chemical Co., Inc., et al. v. Travelers Ins. Co., et al., docket no. BER-L-850-12, was commenced in the Superior Court of the State of New Jersey, Bergen County ("the State Court Action"). The Complaint was served upon Travelers on February 21, 2012. A true and correct copy of the Complaint filed in the State Court Action is attached hereto as Exhibit A. See 28 U.S.C. § 1446(a). No other pleadings, orders or processes have been served upon Travelers. Travelers is unaware of any state court pleadings in this matter beyond the attached Complaint and the summons that accompanied it.

PARTIES

3. Plaintiff E.M. Sergeant Pulp & Chemical Co., Inc. is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Clifton, New Jersey. (See Complaint, Ex. A, at ¶1).

4. Plaintiff Sergeant Chemical Company is a dissolved corporation that was organized and formerly existed under the laws of the State of New Jersey. (See Complaint, Ex. A, at ¶2).

5. Defendant The Travelers Indemnity Company (incorrectly sued as Travelers Insurance Company) is a corporation organized and existing under the laws of the State of Connecticut and has its principal place of business in Hartford, Connecticut.

6. Neither plaintiffs nor Travelers knows the location of defendant Columbia Insurance Company. (See Complaint, Ex. A, at ¶4).

7. Accordingly, insofar as the location of the parties is known, there is complete diversity between plaintiffs and the defendants in this case.

GROUND FOR REMOVAL

8. The basis for removal is 28 U.S.C. § 1441, which generally authorizes removal of actions over which the district courts of the United States would have original jurisdiction.

9. The Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332, the diversity jurisdiction statute, which states that the “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.” 28 U.S.C. § 1332(a)(1).

9. The amount in controversy exceeds \$75,000. Plaintiffs claim that they have been “damaged and will continue to suffer damages until Travelers provides the insurance coverage and defense of all claims as required by the terms of the parties’ agreements,” (see Complaint, Ex. A, at ¶ 19), and allege causes of action for (a) breach of contract and (b) breach of the duty of good faith and fair dealing against Travelers. Based on these allegations, plaintiffs seek “compensatory and punitive damages, with pre-judgment interest, costs, attorneys’ fees and such other relief as the Court deems just and proper.” (See Complaint, Ex. A, at “Wherefore” clause). Additionally, plaintiffs’ pre-suit correspondence to Travelers indicates potential damages in excess of \$75,000.

10. Further, claims for punitive damages and attorneys’ fees may be aggregated with claims for compensatory damages for purposes of satisfying the amount in controversy for diversity jurisdiction. See Goralski v. Shared Techs., Inc., 2009 U.S. Dist. Lexis 69042, *15-16 (D.N.J. 2009).

11. The amount in controversy thus exceeds \$75,000. See 28 U.S.C. § 1332(a).

TIMELINESS

12. Removal pursuant to 28 U.S.C. § 1441 is timely because removal pursuant to that provision is permissible within 30 days after receipt of a copy of the initial pleading on the defendant, which occurred on February 21, 2012.

13. Nothing in this Notice shall constitute a waiver of Travelers right to object to service or jurisdiction.

FILING WITH STATE COURT

14. Travelers will file promptly a copy of this Notice of Removal with the Clerk of the Superior Court of New Jersey, Law Division, Bergen County, where the action has been pending, and will serve the same upon all adverse parties as required by 28 U.S.C. § 1446(d).

WHEREFORE, defendant The Travelers Indemnity Company (incorrectly sued as Travelers Insurance Company) respectfully submits this Notice of Removal removing this case from the Superior Court of New Jersey, Law Division, Bergen County, to this Court.

Dated: March 20, 2012

/s/ John Maloney

John Maloney
GRAHAM CURTIN
A Professional Association
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Attorneys for Defendant
The Travelers Indemnity Company
(incorrectly sued as Travelers Insurance
Company Inc.)

Exhibit A

JOSEPH A. FERRIERO, P.C.
50 Main Street, Suite 6
P.O. Box 157
Hackensack, New Jersey 07601
(201) 669-2929
Attorney for Plaintiffs

E. M. SERGEANT PULP &
CHEMICAL CO., INC. AND
SERGEANT CHEMICAL COMPANY,

Plaintiffs,

v.

TRAVELERS INSURANCE
COMPANY INC. AND COLUMBIA
INSURANCE COMPANY.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: L-850-12

CIVIL ACTION

COMPLAINT FOR DECLARATORY
JUDGMENT AND JURY DEMAND

RECEIVED
JAN 18 2012
SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY FINANCE DIVISION

Plaintiffs E. M. SERGEANT PULP & CHEMICAL CO. INC. a New York Corporation and SERGEANT CHEMICAL COMPANY INC., a New Jersey Corporation by and through their counsel, file this action for Declaratory Judgment against the above-named defendants and states as follows:

The Parties

1. Plaintiff, E. M. SERGEANT PULP & CHEMICAL CO. INC., hereinafter referred to as "E. M.", is a New York corporation, with its main office located at 9 Chelsea Road, Clifton, New Jersey.

2. Plaintiff, SERGEANT CHEMICAL COMPANY, hereinafter referred to as "SERGEANT", was a New Jersey corporation which was dissolved on September 4, 1981.

3. Defendant, TRAVELERS INSURANCE COMPANY, hereinafter referred to as "TRAVELERS", is an insurance company with, upon information and belief, offices located at 6 Century Drive, Parsippany, New Jersey. TRAVELERS has provided insurance to E.M. and SERGEANT. The insurance policies at issue in this litigation was effective from various dates, including but not limited to, 1943, 1945, 1946, 1947, 1948, 1949, 1950, and 1955 through 1964.

4. Defendant COLUMBIA INSURANCE COMPANY, hereinafter referred to as "COLUMBIA", is an insurance company that has provided insurance to Plaintiffs E. M. and SERGEANT. However, Plaintiffs do not know the location of the principal offices of this company at this time. The insurance policies at issue in this litigation were effective from various dates, including but not limited to, 1948 through 1952 and 1955 through 1963.

Factual Background

5. On or about February 4, 2009, E. M. was named as a Third Party Defendant by MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC. in a lawsuit in the Superior Court of New Jersey, Law Division, Essex County under Docket Number L-009868-05.

6. The Third Party Complaint seeks damages under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. for alleged environmental discharges, and contribution and costs in connection with the initial action brought by the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund.

7. Plaintiff has also previously received notices in September 2003 and May 2, 2005 from the United States Environmental Protection Agency that it is a Potential Responsible Party under 42 USCA 9601 et seq.

8. Counsel for Plaintiffs notified Defendant TRAVELERS that a Third Party Complaint had been filed against Plaintiff and provided TRAVELERS with copy of same. Counsel further provided notice to TRAVELERS of the potential claims under 42 USCA 9601 et. seq.

9. The occurrences allegedly occurred during the effective periods of the policies issued by TRAVELERS and/or constitute a claim based on continuous trigger.

10. Defendant TRAVELERS denied coverage for both matters.

11. Plaintiffs objected to Defendant's denial of coverage.

12. The aforementioned law suit under Docket Number L-009868-05 has continued, as has Plaintiffs' exposure under 42 USCA 9601 et seq., and Defendant TRAVELERS has not provided coverage or a defense for these claims.

COUNT I

Breach of Contract against TRAVELERS

13. Plaintiffs repeats the allegations contained in paragraphs 1 through 11 of the Complaint as if fully set forth at length herein.

14. On or about numerous dates, including but not limited to, the years set forth herein, Plaintiffs and TRAVELERS entered into agreements to provide insurance coverage.

15. Plaintiffs' insurance agreements with TRAVELERS were in effect during the claims alleged in the aforementioned litigation.

16. Pursuant to the terms of Plaintiffs' policies, TRAVELERS was required to provide Plaintiffs with insurance coverage for the lawsuit and any future claims that may be made by the United States Environmental Protection Agency.

17. TRAVELERS has refused to provide Plaintiffs with insurance coverage and to provide a defense for these claims.

18. TRAVELERS is in breach of its insurance agreements with Plaintiffs.

19. As a direct and proximate result of TRAVELERS' breach, Plaintiffs have been damaged and will continue to suffer damages until TRAVELERS provides the insurance coverage and a defense of all claims as required by the terms of the parties' agreements.

WHEREFORE, Plaintiffs demand that judgment be entered in this favor against TRAVELERS for compensatory damages, with pre-judgment interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

SECOND COUNT

Breach of Duty of Good Faith and Fair Dealing against TRAVELERS

20. Plaintiffs repeat the allegations in paragraph 1 through 18 of the Complaint as if fully set forth at length.

21. Every contract in New Jersey contains an implied duty of good faith and fair dealing, which calls for the parties to a contract to refrain from doing anything that will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract.

22. TRAVELERS had an obligation to deal in good faith with Plaintiffs pursuant to its agreement to provide insurance coverage to Plaintiffs.

23. TRAVELERS breached the duty of good faith and fair dealing by refusing to provide insurance coverage to Plaintiffs for the litigation and potential environmental claims under 42 USCA 9601 et seq.

24. As a direct and proximate result of TRAVELERS' breach of the duty of good faith and fair dealing, Plaintiffs have suffered damages and will continue to do so until TRAVELERS provides the insurance coverage required by the terms of the parties' agreement.

WHEREFORE, Plaintiffs demand that judgment be entered in its favor against TRAVELERS for compensatory and punitive damages, with pre-judgment interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

COUNT III

Breach of Contract against COLUMBIA

25. Plaintiffs repeat the allegations in paragraph 1 through 23 of the Complaint as if set forth at length herein.

26. On or about 1948, COLUMBIA and Plaintiffs entered into Insurance Agreements.

27. COLUMBIA has breached the Insurance Agreements by failing to provide coverage to Plaintiffs for the claims alleged against Plaintiffs.

28. COLUMBIA has failed to comply with the terms and conditions of Plaintiffs' policies with COLUMBIA.

29. As a direct and proximate result of COLUMBIA's breaches of the Insurance Agreements, Plaintiffs have been damaged, and will continue to suffer damages until COLUMBIA provides the insurance coverage required by the terms of the parties' agreement.

WHEREFORE, Plaintiffs demand that judgment be entered in its favor against COLUMBIA for compensatory damages, with pre-judgment interest, costs, attorneys' fees and such other relief as the Court deems just and proper.

COUNT IV

Breach of Duty of Good Faith and Fair Dealing Against COLUMBIA

30. Plaintiffs repeat the allegations in paragraphs 1 through 28 of the Complaint as if set forth at length herein.

31. Every contract in New Jersey contains an implied duty of good faith and fair dealing, which calls for the parties to a contract to refrain from doing anything that will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract.

32. COLUMBIA had an obligation to deal in good faith with Plaintiffs pursuant to its agreements to provide insurance coverage to Plaintiffs.

33. COLUMBIA breached the duty of good faith and fair dealing by refusing to provide insurance coverage to Plaintiffs for the aforementioned litigation and for the potential environmental claims under 42 USCA 9601 et seq.

34. As a direct and proximate result of COLUMBIA's breach of the duty of good faith and fair dealing, Plaintiffs have suffered damages and will continue to do so until COLUMBIA provides the insurance coverage required by the terms of the parties' agreements.

WHEREFORE, Plaintiffs demand that judgment be entered in its favor against COLUMBIA for compensatory and punitive damages, with pre-judgment interest, costs, attorneys' fees and such other relief as the Court deems equitable and just.

LAW OFFICES OF JOSEPH A. FERRIERO
Attorneys for Plaintiff

By:

Joseph A. Ferriero, Esq.

January 18, 2012

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable herein.

LAW OFFICES OF JOSEPH A. FERRIERO
Attorneys for Plaintiffs

By:

Joseph A. Ferriero, Esq.

January 18, 2012

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Joseph A. Ferriero, Esq. is hereby designated as trial counsel of this matter.

LAW OFFICES OF JOSEPH A. FERRIERO
Attorneys for Plaintiffs

By:

Joseph A. Ferriero, Esq.

January 18, 2012

CERTIFICATION

I hereby certify pursuant to Rule 4:5-1 that the matter in controversy is not the subject of any other Complaint pending in any Court or of a pending arbitration proceeding. No such Complaint or arbitration proceeding is contemplated.

LAW OFFICES OF JOSEPH A. FERRIERO
Attorneys for Plaintiffs

By:

Joseph A. Ferriero, Esq.

Dated: January 18, 2012

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> OK <input type="checkbox"/> CG <input type="checkbox"/> CA CHQ/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	Use for Initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 Pleading will be rejected for filing, under Rule 1:5-6(c), If information above the black bar is not completed or attorney's signature is not affixed		
ATTORNEY/PRO SE NAME JOSEPH A. FERRIERO		TELEPHONE NUMBER (201) 669-2929	COUNTY OF VENUE Bergen
FIRM NAME (if applicable) LAW OFFICES OF JOSEPH A. FERRIERO P. C.		DOCKET NUMBER (when available) L-850-12	
OFFICE ADDRESS 50 MAIN STREET SUITE 6 P. O. BOX 157 HACKENSACK, NEW JERSEY 07602-0157		DOCUMENT TYPE COMPLAINT	
		JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) E.M. SERGEANT PULP & CHEMICAL CO INC & SERGEANT CHEMICAL COMPANY INC	CAPTION EM SERGEANT PULP & CHEMICAL & SERGEANT CHEMICAL CO V. TRAVELERS INSURANCE COMPANY & COLUMBIA INSURANCE COMPANY		
CASE TYPE NUMBER (See reverse side for listing) 505	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) TRAVELERS INSURANCE COMPANY <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input checked="" type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION Case needs to be accelerated since it is an insurance claim and Plaintiffs need coverage to defend against suit and an environmental claim by EPA			
DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?	
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).			
ATTORNEY SIGNATURE: 			

RECEIVED
JAN 18 2012
SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY DIVISION

Side 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

280 ZELNORM 285 STRYKER TRIDENT HIP IMPLANTS 288 PRUDENTIAL TORT LITIGATION 289 REGLAN	290 POMPTON LAKES ENVIRONMENTAL LITIGATION 291 PELVIC MESH/GYNECARE 292 PELVIC MESH/BARD 293 DEPUY ASR HIP IMPLANT LITIGATION
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Mass Tort (Track IV)

248 CIBA GEIGY 286 HORMONE REPLACEMENT THERAPY (HRT) 271 ACCUTANE/ISOTRETINOIN 274 RISPERDAL/SEROQUEL/ZYPREXA 278 ZOMETA/AREDIA 279 GADOLINIUM	281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL 282 FOSAMAX 284 NUVARING 286 LEVAQUIN 287 YAZ/YASMIN/OCCELLA 601 ASBESTOS
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If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59